

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RIVER POINT FARMS, LLC, an Oregon limited
liability company,

Plaintiff,

Case No.: 5:09-CV-00612
(GTS/GHL)

-vs-

EMPIRE FRESH CUTS, LLC, a New York
limited liability company; JAMES R. ZAPPALA,
an individual; and SAMUEL A. ZAPPALA, an
individual,

Defendants.

ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION
SHOULD NOT BE ENTERED,
AND TEMPORARY RESTRAINING ORDER

Upon review of the Complaint of Plaintiff, RIVER POINT FARMS, LLC (“RPF” or “Plaintiff”), on file in the above-captioned action, and the declaration of Robert C. Hale, President, Director and Member of RPF, sworn on the 22nd day of May, 2009; Attorney Certification Why Notice Should Not Be Required Pursuant to Rule 65(b); Memorandum of Law; and other pleadings, papers and proceedings filed heretofore herein, let the Defendant, Empire Fresh Cuts, LLC (“Empire”) show cause before this Court on the **3rd day of June, 2009 at 10 a.m.** or as soon thereafter as counsel can be heard, at the United States Courthouse, 100 S. Clinton Street, Syracuse, NY 13261-7367, before the Honorable Glenn T. Suddaby, why an order for Preliminary Injunction should not be entered in accordance with Rule 65(a) of the Federal Rules of Civil Procedure to enforce the statutory trust pursuant to Section 5(c) of the

Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c), by segregating all trust assets of Empire. Sufficient cause appearing therefore, it is:

ORDERED, that pending hearing and determination of Plaintiff's Motion for a Preliminary Injunction, the corporate Defendant, Empire, its agents, officers, including Defendants, James R. Zappala, and Samuel A. Zappala, subsidiaries, assigns, and financial and banking institutions, shall not alienate, dissipate, pay over or assign any PACA trust assets to any creditor, person or entity, without agreement of the parties or until further order of this Court, or until said Defendant pays RPF the sum of \$189,718.92 by cashiers' check or certified check. Under §499e(c)(2) of PACA, trust assets include perishable agricultural commodities received by a commission merchant, dealer or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivable or proceeds from the sale of such commodities or products, and it is further

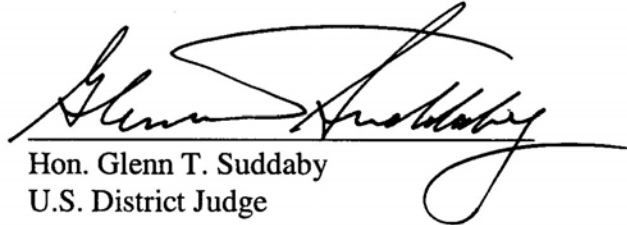
ORDERED, that this Order shall be binding upon the parties to this action, their officers, agents, employees, banking institutions, or attorneys and all other persons or entities who receive actual notice of this Order by personal service or otherwise, and it is further

ORDERED, that RPF is not required to give security in view of the fact that Defendant, Empire, now holds \$189,718.92 of PACA trust assets which are RPF's property and that this Order merely requires Empire to obey the requirements of federal law, and it is further

ORDERED, that RPF must serve Defendants, or their resident agent, or their counsel with a copy of this Order, by personal service, including by facsimile transmission or federal express, on or before the end of the **1st day of June, 2009**. Such service will be deemed good and sufficient.

ORDERED, that Defendants must file any and all responsive papers to Plaintiff's Motion for Preliminary Injunction by **June 2, 2009 at 5:00 p.m.**

DONE and ORDERED, this 29th day of May, 2009 at Syracuse, New York.



Hon. Glenn T. Suddaby
U.S. District Judge